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Remarks:

Executive Secretary

Date

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March 21, 1983

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MEMORANDUM FOR

Mr. Donald P. Gregg
Assistant to the Vice President
for National Security AffairsMr. L. Paul Bremer, III
Executive Secretary
Department of StateMr. David Pickford
Executive Secretary
Department of the TreasuryLt. Col. W. Richard Higgins
Assistant for Interagency Matters
Office of the Secretary of DefenseMr. Roger Clegg
Special Assistant to the Attorney
General
Department of JusticeMr. Raymond Lett
Executive Assistant to the
Secretary
Department of AgricultureMs. Helen Robbins
Executive Assistant to the Secretary
Department of CommerceDr. Alton Keel
Associate Director for National
Security and International
Affairs
Office of Management and BudgetMr. Thomas B. Cormack
Executive Secretary
Central Intelligence AgencyMs. Jackie Tillman
Executive Assistant to the
United States Representative
to the United Nations
Department of StateMr. Dennis Whitfield
Executive Assistant to the
United States Trade
RepresentativeAssistant to the President for
Policy DevelopmentMr. Eric Hemel
Special Assistant to the
Chairman, Council of Economic
AdvisorsCol. George A. Joulwan
Executive Assistant to the
Chairman
Joint Chiefs of Staff
The PentagonSUBJECT: National Security Council Meeting on Export Administration
Act (C)Attached are background papers for the National Security Council
Meeting on the Export Administration Act scheduled for Tuesday, March
22, at 11:00 in the Cabinet Room. (C)*Michael O. Wheeler*
Michael O. Wheeler
Staff Secretary

Attachments

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March 21, 1983

EXPORT ADMINISTRATION ACT**OPTIONS PAPER**

Issue 1: Should the Administration bill include a "contract sanctity" provision that excludes pre-existing contracts from foreign policy export controls? (This prohibition would apply for 270 days, except where the President determines that the absence of foreign policy controls on these exports would prove detrimental to the overriding national interests of the United States).

Analysis:-

Currently, the President may invoke export controls that affect pre-existing contracts at any time on all but agricultural commodities. Under a recently enacted law, pre-existing contracts for agricultural commodities are excluded from export controls for a period of 270 days except in the case of a declared national emergency or state of war.

Senator Heinz and Congressman Bonker have both introduced bills containing contract sanctity provisions. These proposals are strongly supported by the business community.

Pro: The imposition of export controls on pre-existing contracts makes U.S. exporters unreliable suppliers and forces them to incur unexpected economic losses. Equity would require that non-agricultural commodities receive the same protection as agricultural commodities.

Con: The President needs maximum flexibility to conduct U.S. foreign policy short of military actions. In addition, by proposing this limitation, the President might be seen as acknowledging error with regard to the Soviet pipeline sanctions.

Agencies supporting: Agriculture, Commerce, OPD-WH, Treasury, USTR, CEA.

Agencies opposed: Defense, Justice, State, OMB

Decision:

Approve _____

Disapprove _____

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Issue 2: Should the Administration bill give the President new discretionary authority to impose import controls on a country whenever foreign policy export controls are imposed on that country?

Analysis:

Currently there are no provisions authorizing the President to impose import controls whenever export controls are imposed.

Senator Heinz has introduced a bill containing an import control provision. This proposal is supported by some members of the business community, although there is not a business consensus.

Pro: If U.S. exporters are required to incur economic loss, the businesses in the affected countries should also share the economic burden of U.S. foreign policy controls. The proposal gives the President an additional tool for implementing U.S. foreign policy.

Con: Political pressure may be brought to bear upon the President to impose import controls or take stronger measures than would otherwise be the case. Retaliation and other foreign relations problems would likely ensue from adoption of this proposal. Import restrictions imposed against GATT members solely for foreign policy reasons would be in violation of GATT obligations.

Agencies supporting: Commerce, Defense

Agencies opposed: Agriculture, CEA, State, Treasury, USTR, Justice

Decision:

Approve _____ Disapprove _____

Issue 3: Should the Administration bill give the President new discretionary authority to impose import controls as a penalty against companies that violate COCOM or U.S. export controls? If so, should this authority extend to:

- A. Only national security controls?
- B. National security, foreign policy and short supply controls?

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Analysis:

Currently the President does not have this authority. Moreover, COCOM is a purely voluntary organization. None of its members has authority to penalize violations of COCOM provisions by companies of another COCOM member.

Senator Heinz has introduced a bill containing a similar provision. This proposal is strongly supported by the business community.

Pro: Current enforcement provisions are not working well. The authority to impose such sanctions would make multilateral controls through COCOM and enforcement of our export control laws more effective. This proposal would provide a powerful incentive for companies to abide by COCOM provisions and U.S. export laws.

Con: This proposal would jeopardize continued participation in COCOM by certain member states. Any provision for sanctions should result from agreement among the COCOM members rather than by unilateral U.S. statutory mandate, the extraterritorial reach of which will be challenged. As in Issue 2, retaliation and foreign relations problems would likely ensue. Restrictions against GATT members solely imposed for foreign policy reasons would be in violation of the GATT obligations of the United States.

Agencies supporting: A. National security only: CEA, Treasury, USTR, Justice
B. All controls: Commerce, Defense

Agencies opposed: Agriculture, OMB, State

Decision:

Approve _____

- A. For national security controls only _____
B. For all controls _____

Disapprove _____

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ILLUSTRATIVE EXAMPLES OF IMPORT CONTROLS

Issue 2: Should the Administration bill give the President new discretionary authority to impose import controls on a country whenever foreign policy export controls are imposed on that country?

Example: The United States has imposed foreign policy export controls on Libya. The proposal would allow the President, at his discretion, to prevent the importation of some or all products from Libya to the U.S.

Issue 3: Should the Administration bill give the President new discretionary authority to impose import controls as a penalty against companies that violate COCOM or U.S. export controls? If so, should this authority extend to:

- A. Only national security controls?
- B. National security, foreign policy and short supply controls?

Examples of A:

1. A foreign subsidiary of a U.S. company (X), in disregard of COCOM agreements and a U.S. national security control, sells a sophisticated U.S. computer to the Soviet Union without a license.
2. A purely French company (Y), in disregard of a COCOM agreement, sells a sophisticated, purely French computer to the Soviet Union.

This proposal would allow the United States to penalize both X and Y by preventing the importation into the United States of any or all products of X and Y for a given time period.

Comment: These two factual situations illustrate opposite extremes in the possible implementation of this provision. The factual situation with Y is the most extreme example. In the absence of this provision, Y's transfer would not be a violation of U.S. law because a foreign company shipping a foreign computer would not otherwise be subject to the jurisdictional reach of U.S. law.

2.

Examples of B:

1. The examples in "A" are also applicable here.
2. The United States imposed foreign policy controls in the form of the Pipeline Sanctions against the Soviet Union. This provision would have allowed the President to prevent the importation into the United States of products from companies that shipped goods to the Soviet Union in disregard of our sanctions.